

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of )  
                                )  
Telephone Number Portability )      CC Docket No. 95-116  
                                )

**COMMENTS OF NTC COMMUNICATIONS, L.L.C.**  
**ON INITIAL REGULATORY FLEXIBILITY ANALYSIS**

NTC Communications, L.L.C. (“NTC”) 1/ submits these comments in response to the Initial Regulatory Flexibility Analysis (“IRFA”), issued as an attachment to a Public Notice, FCC 05-87, 20 FCC Rcd 8616 (released April 22, 2005) (“*Public Notice*”), in the above-referenced docket. The IRFA, issued in response to the decision of the U.S. Court of Appeals for the D.C. Circuit that remanded, in part, the *Intermodal Order* in this proceeding, 2/ is intended to assess the impact of the *Intermodal Order* on “small entities.”

While NTC recognizes the Commission’s commitment to establishing and enforcing number portability obligations for local exchange carriers (“LECs”), NTC is concerned that some of the boilerplate language in the IRFA could have unintended consequences. In particular, the IRFA appears to inadvertently cast its net too broadly by mentioning certain small entities that are not LECs, and therefore are not subject to the number portability obligations of the Act, 47 U.S.C. § 251(b), nor to the rules that the Commission adopted in the *Intermodal*

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1/ Headquartered in Edinburg, Virginia, NTC is a leading provider of Shared Tenant Service (“STS”), as well as television and high speed Internet services, sold primarily to consumers living in off-campus college student housing complexes and in other multi-tenant apartment buildings. NTC was established in 1996 to serve student apartments around the campus of James Madison University in Harrisonburg, Virginia, and has grown into 16 markets in seven Southeastern states.

2/ *United States Telecom Association v. FCC*, 400 F.3d 29 (D.C. Cir. 2005) (“USTA v. FCC”), remanding in part *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd 23697 (2003) (“*Intermodal Order*”).

*Order.* This oversight should be corrected in the Final Regulatory Flexibility Analysis (“FRFA”) to avoid unnecessary confusion regarding the applicability of number portability rules or other § 251(b) requirements to these entities.

Specifically, the Commission should remove Shared Tenant Service (“STS”) providers from its discussion in Section C, “Description and Estimate of the Number of Small Entities to Which the Rules Would Apply,” in the Regulatory Flexibility Analysis. This would make it clear that non-common carrier STS providers are not subject to the number portability obligations established in § 251(b) and the *Intermodal Order*. The reference to STS providers in the IRFA appears in a paragraph that mentions four types of entities – Competitive LECs, Competitive Access Providers, Other Local Service Providers, and STS providers – grouped together not based on any commonality in the regulatory regimes applicable to these four categories, but because “neither the Commission nor the SBA has developed a small business size standard specifically for these service providers.”<sup>3/</sup> These four categories of entities have been linked in boilerplate language used in other FCC Regulatory Flexibility Analyses for the same reason.<sup>4/</sup> However, in this case the inclusion of STS providers in this boilerplate language is highly inappropriate, because the inclusion of STS providers here could be read to imply that

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<sup>3/</sup> *Public Notice*, Appendix A (Initial Regulatory Flexibility Analysis), at ¶ 9.

<sup>4/</sup> To be sure, some of these prior Regulatory Flexibility Analyses and other similar routine documents issued by the Commission (such as the instructions accompanying certain forms) apparently assume, without engaging in any analysis or providing any substantive support for such an assumption, that STS providers are telecommunications common carriers subject to obligations similar to those that apply to competitive LECs. However, other similar routine FCC documents, also with little or no analysis, reach the opposite conclusion. See, e.g., *Public Notice, “Common Carrier Bureau Seeks Comment on Telecommunications Access Provider Survey,”* 11 FCC Rcd 1287, ¶¶ 6, 11 (Com. Car. Bur. 1995) (“Pay telephone providers, call aggregators such as hotels and hospitals, paging service providers, and shared tenant service providers operating as non-common carriers would not be required to report. . . . Shared tenant service providers would be exempt because they do not compete generally in local access markets.”).

the *Intermodal Order*'s number portability rules would apply to STS providers. Neither the Act nor any Commission order establishes any such obligations.

Section 251(b) establishes a variety of interconnection obligations, including number portability, that apply to "local exchange carriers," as that term is defined in 47 U.S.C. § 153(26). STS providers are not LECs – they do not engage in "telephone exchange service" or "exchange access," 47 U.S.C. § 153(26) – and the Commission has never specifically ruled that STS providers should be treated as LECs for number portability or any other regulatory purposes. Indeed, the IRFA prepared by the Commission for the NPRM on wireless-to-wireline number portability – issued in conjunction with the *Intermodal Order* – appropriately makes no reference to STS providers. The inclusion of STS providers in the present IRFA appears to have been inadvertent and not intended to expand the scope of § 251(b). This oversight should be corrected in the FRFA.

Moreover, the Commission cannot and should not use a Regulatory Flexibility Analysis to expand the scope of the number portability rules in a manner that has potentially profound consequences for STS providers. In its ten-year-old number portability proceeding, the Commission has never even sought comment on whether it would be feasible for STS providers to offer number portability, and has never so decided. *5/*

In fact, it would be impossible as a practical matter for STS providers to offer number portability, and imposing number portability obligations would seriously disrupt core

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*5/* While NTC believes there is no uncertainty regarding the status or obligations of non-common carrier STS providers, to the extent that the Commission believes there is any uncertainty or lack of clarity, issuing boilerplate language in a Regulatory Flexibility Analysis is definitely the wrong way to resolve that uncertainty. Rather, if the Commission believes this issue needs to be addressed, it should do so in a proceeding that develops a full record on the relevant factual and legal issues and gives parties appropriate opportunities to comment. *Cf. USTA v. FCC, supra* (remanding FCC order in part because it failed to follow statutorily mandated procedures to consider impact of new rule on small business).

aspects of the STS business and would create an insoluble conflict between the rights of STS providers, building owners, and tenants. STS providers are LEC customers themselves, and are entitled to retain their own telephone numbers. *See* 47 C.F.R. § 52.23(a)(3). STS providers often serve commercial or residential buildings, and depend on being able to assign permanent phone numbers to tenants based on the location of each individual room or unit in the building. For example, in the case of a residential building for college students, an STS provider may be required to provide room 328 with a phone number that ends in “328.” If number portability obligations were expanded to STS owners, and STS providers’ existing interest in the numbers were transferred to the tenants, then each tenant could take their number with them when they relocate, eliminating the STS provider’s ability to provide building-specific numbers. The Commission should clarify that this was not the intention of the *Intermodal Order* by making the appropriate changes to the Regulatory Flexibility Analysis.

For all of these reasons, NTC respectfully requests that the FRFA be revised to eliminate the reference to Shared Tenant Service providers.

Respectfully submitted,

NTC COMMUNICATIONS, L.L.C.

By: \_\_\_\_\_

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